

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR 03-2365 JB

TREVOR NEZ,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendant Trevor Nez's Appeal of Magistrate's Detention Order, filed December 2, 2003 (Docket No. 15). The issues are whether there is a serious risk that Nez will not appear and whether he will endanger the safety of another person or of the community. Because the Court finds that Nez is both a danger to the community and a flight risk, and to protect the community and to ensure Nez's appearance at Court, the Court will affirm the detention order entered by the Honorable Robert Scott, United State Magistrate, and order the continued detention of Nez pending his trial.

FINDINGS

1. There are factors present indicating risk of non-appearance. First, there is evidence of alcohol abuse addiction, at least over the last two years. Second, after beating and dumping Paul Williams on the side of the road, Nez went to the home of the mother of his child and requested a sum of money that he was saving to make a car payment and asked for an additional five dollars (\$5.00) for gas money. The amount was over one-hundred dollars and the Defendant was given that and the gas money. Nez's actions are consistent with someone who plans to flee after committing

a crime.

2. There are factors present suggesting danger to the community. First, the Court takes notice of the alleged offense's violent nature, even by Nez's own description. This Court is permitted to take into account the particularly cruel and heinous nature of Nez's alleged crime when determining whether the Court should release him into the community pending trial. See 18 U.S.C. § 3142(g)(1). The description of the incident involving Williams comes from Nez. Second, Nez has an arrest/conviction history, including violent conduct that is similar to that with which he is charged in this case. Third, there are indications of unresolved substance abuse/addiction issues.

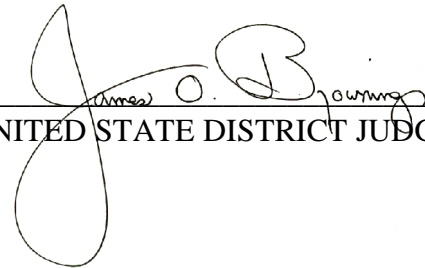
3. Nez is a flight risk.

4. Nez is a danger to the community.

5. There is no condition or combination of conditions that will reasonably assure the appearance of the person as required and the safety of other persons in the community. Pretrial Services considered Nez for placement at the La Posada Halfway House at the time of his arrest, but did not view such placement as appropriate given his escalating history of violence. On December 9, 2003, David Pena, Program Director of the La Posada Halfway House, reviewed available case materials and determined Nez to be inappropriate for placement at the facility. Also, the Court is concerned that, if the Court were to order Nez released, custody could revert to the Navajo Nation as there is evidence that he is under a 365 day custodial sentence which the Navajo District Court imposed in case CR-03-1343 on October 27, 2003 for the events at issue here. No one contends that Nez's return to the Navajo Nation would be appropriate for the safety of the community, of Williams' family, or of Nez.

IT IS ORDERED that the United States Magistrate's detention order is affirmed and that the

United States continue to detain Defendant Trevor Nez pending his trial.


UNITED STATE DISTRICT JUDGE

David Iglesias
United States Attorney
Paula G. Burnett
Marron Lee
Assistant United States Attorneys
Albuquerque, New Mexico

Attorneys for the United States of America

Stephen P. McCue
Federal Public Defender
Albuquerque, New Mexico

Attorney for Defendant Trevor Nez

Penni Adrian
Albuquerque, New Mexico

Attorney for Defendant Daniel Shadowhawk Foghorn

Doug Couleur
Albuquerque, New Mexico

Attorney for Defendant Erickson Tso